

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA §
§
VS. §
§
TIMOTHY KELSEY BRANTLEY §

CASE NO. 4:09cr102

**MEMORANDUM DECLINING TO ADOPT REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On September 25, 2009, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that the Defendant's Opposed Motion to Suppress (docket entry #18) be granted.

The court, having made a *de novo* review of the objections raised by the Government, is of the opinion that the findings and conclusions of the Magistrate Judge are not correct, and the objections of the Government have merit. In view of the totality of the circumstances and in light of Sergeant Hemmenway's specialized knowledge, training and experience, the court finds that Sergeant Hemmenway developed reasonable suspicion that the Defendant was in possession of illegal narcotics prior to receiving the returns from the license checks. The court finds that Sergeant Hemmenway relied primarily on the following factors in developing reasonable suspicion: (1) the Defendant took an unusually long time to pull over; (2) the Defendant admitted to being on probation; (3) the Defendant was carrying an unusually large amount of cash in his wallet; (4) the Defendant was driving a rental car that was not rented in his name; and (5) the Defendant's

demeanor changed when he was questioned about guns and narcotics. The court concludes that Sergeant Hemmenway's continued detention of the Defendant after receiving the returns from the license checks was permissible because Sergeant Hemmenway had obtained reasonable suspicion during the course of his investigation of the initial moving violation that the Defendant was in possession of illegal narcotics. *See United States v. Powell*, 137 Fed. Appx. 701, 706 (5th Cir. 2005).

In light of the foregoing, the court declines to adopt the findings and conclusions of the Magistrate Judge. It is, therefore,

ORDERED that the Defendant's Opposed Motion to Suppress (docket entry #18) is **DENIED**.

SIGNED this the 30th day of October, 2009.



RICHARD A. SCELL
UNITED STATES DISTRICT JUDGE